IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1908 of 1990
With
CROSS OBJECTION No. 114 of 2007
With
CIVIL APPLICATION No. 3177 of 1999
In FIRST APPEAL No. 1908 of 1990
With
CIVIL APPLICATION No. 3178 of 1999
In FIRST APPEAL No. 1908 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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ORIENTAL INSURANCE CO LTD - Appellant(s)
Versus
NIRMALABEN BIPINCHANDRA PATEL W/O BIPINCHANDRA M.PATEL & 2 - Defendant(s)

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Appearance :
MR SHALIN N MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1,
MR AJ PATEL for Defendant(s) : 1.2.1, 1.2.2, 1.2.3,1.2.4
DELETED for Defendant(s) : 2,
NOTICE SERVED for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/04/2008

ORAL JUDGMENT

1. By way of First Appeal No. 1908 of 1990, filed by the original opponent no. 3, the challenge is qua the judgement and award dated 31.07.90 passed by the Motor Accident Claims Tribunal (Auxi), Baroda in MACP No. 806 of 1986 whereby the Tribunal awarded a sum of Rs.

7,50,660/- by way of compensation payable to the original claimants by the original opponent nos. 1, 2 and 3.

2. Cross Objection No. 114 of 2007 has been filed by the original claimants to the extent of enhancement of the compensation amount.

3. The original claimants had filed claim petition claiming compensation to the tune of Rs. 10,00,000/- in respect of the accident which occurred on 12.03.86 near Jayratna building, Panna Nivas, R.V. Desai Road while the original claimant was driving the scooter bearing no. GAF 5810. At that time, on the same road, the original opponent no.1 came from behind driving truck bearing no. GRQ 5273 at excessive speed and hit the rear portion of the original claimant's scooter as a result of which he was thrown on the road and the left side front wheel of the truck ran over both his legs. He was admitted in SSG hospital, Baroda and from there he was shifted to Military hospital, Pune where operations as well as drafting in the wounds were performed and after amputation of the left leg below knee, his disability was assessed at 100%. He

was transferred to Military hospital, Ahmedabad and discharged from service w.e.f 15.02.1988. The Tribunal after hearing the parties passed the aforesaid award.

4. Mr. Mehta, learned counsel for the insurance company has challenged the award of the Tribunal mainly on the ground of quantum of compensation. He has submitted that the Tribunal has failed to appreciate that where the terms and conditions of the agreement and between the parties is reduced to writing, no oral evidence is admissible in evidence in law to show anything to the contrary to such terms and conditions.

4.1 He has submitted that the Tribunal has erred in over-emphasizing the fact that a rebate of Rs. 47/- and not Rs. 25/- was given to the insured, all the while overlooking that the amount of rebate would be calculated on the amount of premium paid and at that stage there is not application of mind as to whether the insured should have paid Rs. 460/- for covering unlimited third party risk whereas infact the owner has paid only Rs. 390/- that is Rs. 240/- plus Rs.

150/- as stated hereinabove.

5. Heard learned counsel and gone through the materials placed on record including the award of the Tribunal. The Tribunal has gone through the evidence in detail and has come to the conclusion that the insurance company has accepted the premium for unlimited liability and that merely because the premium amount is shown in the column of limited liability, after actually accepting the same for purpose of unlimited liability, the insurance company cannot claim limited liability. In that view of the matter the insurance company cannot be absolved from the liability to pay compensation in respect of the injuries sustained by the original claimant. The reasonings adopted and findings arrived at by the Tribunal are just and proper and do not call for any interference in the award.

5.1 As far as the amount of compensation is concerned, the Tribunal has assessed the income of the deceased including the increase of income which might have taken place in future and the same is just and proper. No interference qua increase or decrease of

the compensation amount is called for by this Court.

6. Moreover, the insurance company has initiated this appeal without even joining the owner as a party. In that view of the matter, this appeal deserves to be dismissed. Even other wise I am in complete agreement with the reasonings adopted and findings arrived at by the Tribunal and do not see any reason for interference in the award.

7. In the premises aforesaid, First Appeal No. 1908 of 1990 is dismissed. In view of the aforesaid reasonings and the order passed in First Appeal No. 1908 of 1990, Cross Objection No. 114 of 2007 is also dismissed. Accordingly, Civil Applications No. 3177 & 3178 of 1999 would not survive and are disposed of. No order as to costs.

(K.S. JHAVERI, J.)

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